

STATE OF NORTH CAROLINA
COUNTY OF CHATHAM

FILED
IN THE GENERAL COURT OF JUSTICE
2011 OCT 3 PM 3:18
SUPERIOR COURT DIVISION
FILE NO. 11CV5854
CHATHAM COUNTY C.S.C.

JOHN BENTON and spouse
SUZANNE BENTON, D/B/A
B & B POULTRY FARM, INC.,
ET AL.,

Plaintiffs,

vs.

OMTRON USA, L.L.C.
D/B/A TOWNSENDS,
A Limited Liability Corporation,

Defendant.

BY)

BME

PLAINTIFFS' VERIFIED
COMPLAINT
(JURY TRIAL REQUESTED)

NOW COME the Plaintiffs, by and through undersigned counsel, complaining of
the Defendant, and allege as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff John Benton and spouse Suzanne Benton, d/b/a B & B Poultry Farm Inc., are citizens and residents of Chatham County, North Carolina.
2. Plaintiff Wallace Barbour and spouse Faye Barbour, d/b/a W & F Poultry, are citizens and residents of Wake County, North Carolina.
3. Plaintiff Bernard Beck and spouse Helen Beck, d/b/a Beck Farm, are citizens and residents of Randolph County, North Carolina.
4. Plaintiff Johnny M. Asbill and spouse Patricia Asbill, d/b/a P & M Farm, are citizens and residents of Randolph County, North Carolina.

5. Plaintiff Mickey Bowman and spouse Michele Bowman, d/b/a Rockin B Farm, Inc., are citizens and residents of Randolph County, North Carolina.
6. Plaintiff Craig Bray and spouse Wanda Bray, d/b/a Craig Bray Farms, are citizens and residents of Chatham County, North Carolina.
7. Plaintiff Billy Joe Brower, d/b/a Pine Hill Farm, is a citizen and resident of Randolph County, North Carolina.
8. Plaintiff Jerry D. Brown and spouse Peggy K. Brown, d/b/a J.D. Brown Farm, are citizens and residents of Randolph County, North Carolina.
9. Plaintiff Ricky Brown and spouse Lib Brown, d/b/a Ricky Brown Farm, is a citizen and resident of Randolph County, North Carolina.
10. Plaintiff Norman Burrow, and spouse, Joanne Burrow, d/b/a Norman Burrow Farm, are citizens and residents of Randolph County, North Carolina
11. Plaintiff Talmadge Harlon Butler, Sr. and spouse Amy K. Butler, d/b/a Frog Town Farm and River Forest Farm, are citizens and residents of Moore County, North Carolina.
12. Plaintiff Gary Caviness and spouse Phyliss Caviness, d/b/a G.Q. Caviness Farm, are citizens and residents of Randolph County, North Carolina.
13. Plaintiff Anthony Chriscoe and spouse Donna Chriscoe, d/b/a T.C. Farms, are citizens and residents of Moore County, North Carolina.
14. Plaintiff Daniel Coates and spouse Tracy Coates, d/b/a Rooster Ridge Farm, are citizens and residents of Harnett County, North Carolina.
15. Plaintiff Curtis Coble and spouse Rhonda Coble, d/b/a Stoney Ford Farm, are citizens and residents of Randolph County, North Carolina.

16. Plaintiff David Coble and spouse Sandra Coble, d/b/a Coble Farm, are citizens and residents of Randolph County, North Carolina.
17. Plaintiff Travis Cox and spouse Melissa Cox, d/b/a Travis Cox Enterprises, Inc., are citizens and residents of Randolph County, North Carolina.
18. Plaintiff Jimmy Daniels and spouse Pam Daniels, d/b/a P & J Farms Inc., are citizens and residents of Randolph County, North Carolina.
19. Plaintiff Eugene Dowdy and spouse Amy Dowdy, d/b/a Daniel Bouldin Farm, are citizens and residents of Chatham County, North Carolina.
20. Plaintiff Max Dunlap and spouse Ruth Dunlap, d/b/a Max Dunlap Farm, are citizens and residents of Moore County, North Carolina.
21. Plaintiff Robert Eldridge, d/b/a R & T Eldridge Farm and MeadowBrook Farm, is a citizens and resident of Johnston County, North Carolina.
22. Plaintiff Alan Fish and spouse Sherry Fish, d/b/a F & F Farms, are citizens and residents of Wake County, North Carolina.
23. Plaintiff Mike Fogleman and spouse Jamie Fogleman, d/b/a Fogleman Poultry, are citizens and residents of Randolph County, North Carolina.
24. Plaintiff Kelly Gaines, d/b/a Gaines Farm, is a citizen and resident of Chatham County, North Carolina.
25. Plaintiff David Garner and spouse Karen Garner, d/b/a Garner Farm, are citizens and residents of Randolph County, North Carolina.
26. Plaintiff Silas Brooks Garner and spouse Cynthia S. Garner, d/b/a Garner Farm, are citizens and residents of Randolph County, North Carolina.
27. Plaintiff Roger Garner and spouse, Renita Garner, d/b/a G & G Farms,

are citizens and residents of Moore County, North Carolina.

28. Plaintiff Matthew Gray and spouse Amy Gray, d/b/a Matthew Gray Farm, are citizens and residents of Chatham County, North Carolina.

29. Plaintiff Cassius Green and spouse Debra Green, d/b/a Cassius Green Farm, are citizens and residents of Chatham County, North Carolina.

30. Plaintiff Donald Hall and spouse Deborah Hall, d/b/a Mollie Field Farm Inc., are citizens and residents of Harnett County, North Carolina.

31. Plaintiff Phillip Harrelson, d/b/a White Flint Farm, is a citizen and resident of Randolph County, North Carolina.

32. Plaintiffs Mike R. Harrington, and Jeff C. Harrington, d/b/a Harrington Brothers Poultry, are citizens and residents of Lee County, North Carolina.

33. Plaintiff Don Harris, d/b/a Harris Poultry Farm, is a citizen and resident of Moore County, North Carolina.

34. Plaintiff Doug Harris and spouse Teresa Harris, d/b/a Doug Harris Farm, are citizens and residents of Moore County, North Carolina.

35. Plaintiff Lynn Harris and spouse Martha Harris, d/b/a Lynn Harris Farm, are citizens and residents of Moore County, North Carolina.

36. Plaintiff Larry Hicks and spouse Sylvia Hicks, d/b/a J.B. Hicks & Son Inc., are citizens and residents of Randolph County, North Carolina.

37. Plaintiff Paul Holmes and spouse Sonya Holmes, d/b/a Holmes Poultry Farm, are citizens and residents of Harnett County, North Carolina.

38. Plaintiff Bryan Howell and spouse Terri Howell, d/b/a Oakridge Poultry, are citizens and residents of Harnett County, North Carolina.

39. Plaintiff Stevan Howell, d/b/a Jarmon Farm, is a citizen and resident of Harnett County, North Carolina.
40. Plaintiff Vernon W. Howell and spouse Barbara H. Howell, d/b/a Howell Farms, are citizens and residents of Harnett County, North Carolina.
41. Plaintiff Aaron Johnson, Jr, d/b/a Aaron Johnson, Jr. L.L.C., is a citizen and resident of Harnett County, North Carolina.
42. Plaintiff Barry Johnson and spouse Penny Johnson, d/b/a Barry Johnson Farm, are citizens and residents of Randolph County, North Carolina.
43. Plaintiffs David Johnson and Robbie Johnson, d/b/a Rocky Acres Farm, are citizens and residents of Chatham County, North Carolina.
44. Plaintiff Ellis Buster Johnson and spouse Cindy Johnson, d/b/a J & J Farms, are citizens and residents of Harnett County, North Carolina.
45. Plaintiff Randall Kelly and spouse Margaret Kelly, d/b/a Buckhorn Farm, are citizens and residents of Lee County, North Carolina.
46. Plaintiff Wendell Kidd and spouse Judith Kidd, d/b/a Wendell Kidd Farm, are citizens and residents of Moore County, North Carolina.
47. Plaintiff Phillip Kiser and spouse Pat Kiser, d/b/a Phillip Kiser Farm, Kiser Farm, and Roy Chriscoe Farm, are citizens and residents of Randolph County, North Carolina.
48. Plaintiff Donald Kiser and spouse Anita Kiser, d/b/a Donald Kiser Farm, are citizens and residents of Randolph County, North Carolina.
49. Plaintiff Richard Earl Kivett and spouse Jeraldeen Kivett, d/b/a Jeraldeen Kivett Farm, are citizens and residents of Randolph County, North Carolina.

Martindale Farm, are citizens and residents of Moore County, North Carolina.

61. Plaintiff Neil Matthews and spouse Heidi Matthews, d/b/a Matthews Farm, are citizens and residents of Chatham County, North Carolina.

62. Plaintiff H. Allen McIver II and spouse Rebecca McIver, d/b/a McIver Farms, are citizens and residents of Chatham County, North Carolina.

63. Plaintiff Larry McPherson and spouse Christine McPherson, d/b/a McPherson Farm Ventures, Inc., are citizens and residents of Randolph County, North Carolina.

64. Plaintiff Jon A. Nance, d/b/a Jon Nance Farm, is a citizen and resident of Randolph County, North Carolina.

65. Plaintiff John Lewis Nordon and spouse Evelyn Joy Nordon, d/b/a Nordon Farms, are citizens and residents of Harnett County, North Carolina.

66. Plaintiff Johnny Parker and spouse Donna Parker, d/b/a Johnny Parker Farms, are citizens and residents of Harnett County, North Carolina.

67. Plaintiff Jimmy Phillips and spouse Patsy Phillips, d/b/a Patsy Phillips Farm, are citizens and residents of Chatham County, North Carolina.

68. Plaintiff Tony Reeder and spouse Vickie Reeder, d/b/a Tony Reeder Farm, are citizens and residents of Randolph County, North Carolina.

69. Plaintiff Jackie Rives, d/b/a Jackie Rives Farm, is a citizen and resident of Chatham County, North Carolina.

70. Plaintiff Ronald P. Scott and spouse Bonnie H. Scott, d/b/a Bonnie Scott Farm, are citizens and residents of Chatham County, North Carolina.

71. Plaintiff Donald W. Scotten, d/b/a Scotten Poultry Farm, is a citizen and

resident of Randolph County, North Carolina.

72. Plaintiff Jackie Smith and spouse Janie Smith, d/b/a Channah Farms, are citizens and residents of Randolph County, North Carolina.

73. Plaintiff Ronnie L. Smith and spouse Vickie E. Smith, d/b/a Ronnie Smith Farm, are citizens and residents of Randolph County, North Carolina.

74. Plaintiff James Ralph Sipe, and spouse Patricia A. Sipe, d/b/a James Sipe Farm, are citizens and residents of Chatham County, North Carolina.

75. Plaintiff Brothie T. Thomas and spouse Deborah W. Thomas, d/b/a Brock Farm and Mike and Angel Farm, are citizens and residents of Harnett County, North Carolina.

76. Plaintiff Nancy Fox White, d/b/a Fox Poultry Farm, is a citizen and resident of Randolph County, North Carolina.

77. Plaintiff Todd White and spouse Kathy White, d/b/a Todd White Farm, are citizens and residents of Chatham County, North Carolina.

78. Plaintiff Anthony Womack and spouse Teresa Womack, d/b/a Teresa Womack Farm, are citizens and residents of Harnett County, North Carolina.

79. Defendant, Omtron USA, L.L.C. d/b/a Townsends, Inc. (hereafter "Defendant Omtron") is a limited liability corporation, incorporated in Delaware whose principal place of business and nerve center for corporate operations is in Siler City, Chatham County, North Carolina.

80. This is an action to recover damages for breach of contract arising out of contractual obligations and services provided by Plaintiffs to Defendant Omtron.

81. The Court has jurisdiction over the parties and subject matter of this

dispute pursuant to N.C.G.S. 7A-24- and N.C. Gen. Stat. 1-75.4.

82. Venue is proper in Chatham County, North Carolina pursuant to N.C. Gen. State. 1-76, et. seq.

83. The amount in controversy is in excess of the sum of Ten Thousand Dollars (\$10,000.00) for each named plaintiff.

FACTUAL ALLEGATIONS

84. Prior to January, 2011, the Plaintiffs were poultry farmers who provided labor and services related to the growing of poultry owned by a poultry integrator named Townsends, Inc. pursuant to a contract for said labor and services.

85. In December, 2010, Townsends, Inc. filed for bankruptcy protection. (In Re Townsend, Inc., et al., Debtors, United States Bankruptcy Court, District of Delaware, Chapter 11, Case No 10-14092).

86. On February 18, 2011, the Bankruptcy Court approved Defendant Omtron's purchase of certain assets of Townsends, including but not limited to the assignment of Townsends' contractual obligations to Plaintiffs to Defendant Omtron.

87. Thereafter, the Plaintiffs continued to operate as poultry growers for Defendant Omtron.

88. In June, 2011, Defendant Omtron USA and each of the Plaintiffs entered into new written contractual agreements, styled "Broiler Growing Contract" (hereafter "Contract") which set forth the respective duties and responsibilities of the parties. A digital copy of the parties' contracts is attached hereto and incorporated by reference as if fully set forth herein as Plaintiffs' Exhibit 1.

89. The Contract between each Plaintiff and Defendant Omtron was for an

initial term of three (3) years, subject to each party's right to terminate the Contract under certain specific conditions.

90. According to the Contracts, Defendant Omtron's right to terminate the Contract during the initial 3 year period was limited to instances in which an individual grower was in breach or default of the Contract.

91. On July 27, 2011, Defendant Omtron suddenly and without warning announced that it was closing its poultry processing operations.

92. By letter dated August 9, 2011, Defendant Omtron sent a "Notice of Termination of Omtron/Townsend's Broiler Growing Contract" to all Plaintiffs stating in part that it would "cease providing flocks under the Contract."

93. According to the August 9, 2011, Notice of Termination letter, the decision to terminate the Contract between the parties was not based on any breach or default by any Plaintiff, but was due to "economic conditions."

94. Plaintiffs have demanded payment for breach of contract from Defendant Omtron and Defendant Omtron has failed or refused to pay Plaintiffs' claims.

FIRST CLAIM FOR RELIEF: BREACH OF CONTRACT

95. The Plaintiffs reallege and incorporate herein by reference the allegations contained in the preceding and subsequent paragraphs of Plaintiffs' Complaint.

96. Each Plaintiff signed an individual "Broiler Growing Contract" with Defendant Omtron in June, 2011, setting out certain specified duties for each Plaintiff, in which Defendant Omtron promised to provide poultry to Plaintiffs and to pay the Plaintiffs for growing said poultry for a period of three years.

97. When each Plaintiff entered into the "Broiler Growing Contract" with Omtron, each Plaintiff provided good and valuable consideration.

98. At all times relevant, Plaintiffs have fully performed and completed all obligations required under the parties' contractual agreement.

99. At all times relevant, Plaintiffs were ready, willing, and able to continue performing their duties as set forth in the Contract throughout the three year term of the respective Contracts.

100. Defendant Omtron's premature termination of the Plaintiffs' three year Contracts based on a right not provided in the Contract constitutes a material breach of Plaintiffs' contracts.

101. As a direct and proximate result of Defendant Omtron's breach of Plaintiffs' contracts, Plaintiffs have been damaged in excess of the amount of Ten Thousand Dollars (\$10,000.00) per Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request relief from this Honorable Court as follows:

1. For an Order entering Judgment against Omtron for each of Plaintiffs' breach of contract claims, for an amount to be determined by a jury in the trial of this action but in any event in excess of the sum of Ten Thousand Dollars (\$10,000.00);
2. For an order awarding Plaintiffs' the costs of this action, including reasonable attorney's fees and pre and post judgment interest;
3. For a jury trial on all issues of fact; and,

4. For such other and further relief as this Honorable Court may deem just and proper.

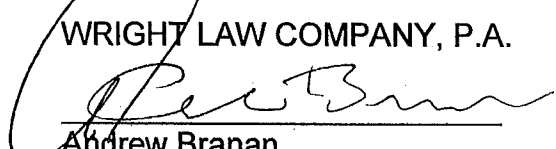
Respectfully submitted this 3^d day of October, 2011.

HOLTKAMP LAW FIRM



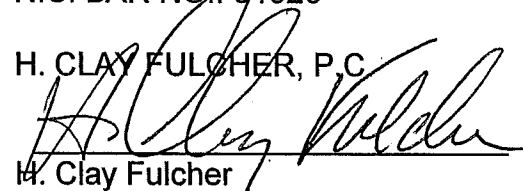
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STATE OF NORTH CAROLINA

VERIFICATION

COUNTY OF CHATHAM

John and Suzanne Benton being duly sworn and depose and state that they are Plaintiffs in the foregoing action, that they have read the foregoing Plaintiffs' Verified Complaint and that the matters and things alleged therein are true to their own knowledge save and except for those matters and things therein alleged upon information and belief, and that as to those matters they believe them to be true.

This the 1 day of October, 2011.

John Benton
John Benton

Suzanne Benton
Suzanne Benton

~~STATE OF NORTH CAROLINA~~
MONTANA
~~STATE OF WYOMING~~

ACKNOWLEDGMENT

COUNTY OF GALLATIN

I, Notary Public of said County and State do hereby certify that John and Suzanne Benton personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal, this the 1 day of October, 2011.

Notary Public: Elizabeth Roos
My Commission Expires: Aug. 9, 2015

